

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VARISCITE NY FOUR, LLC AND VARISCITE NY
FIVE, LLC,

Plaintiffs,

v.

NEW YORK STATE CANNABIS CONTROL
BOARD; NEW YORK STATE OFFICE OF
CANNABIS MANAGEMENT; TREMAINE
WRIGHT; AND CHRIS ALEXANDER,

Defendants.

**ATTORNEY AFFIRMATION IN
SUPPORT OF PLAINTIFFS'
ORDER TO SHOW CAUSE**

Civil Action No.: 1:23-cv-01599
(DNH/CFH)

JEFFERY M. JENSEN, ESQ., an attorney admitted to practice law before this Honorable Court pro hac vice, affirms under penalty of perjury the following:

1. I am an attorney licensed to practice law in the State of New York. I am counsel for Plaintiffs Variscite NY Four, LLC (“Variscite Four”) and Variscite NY Five, LLC (“Variscite Five”) (collectively “Plaintiffs”) in the above-entitled action. I respectfully submit this affirmation in support of Plaintiffs’ Order to Show Cause.

2. This affirmation is made upon information and belief, except as to those portions where your affirmant has actual knowledge thereof.

3. On or about December 18, 2023, I submitted the Adult Use Cannabis Retail Dispensary Applications for Variscite Four and for Variscite Five.

4. Variscite Four is majority owned (51%) by an individual who was convicted of a cannabis offense in California under California law. He was not convicted of a cannabis offense in New York or under New York law. He lived in an area the City of Los Angeles designated as a

disproportionately impacted area for cannabis enforcement for more than seven years. He resides in Los Angeles County and has a household income less than 80% of the median household income of Los Angeles County. I submitted paperwork confirming all of this as part of Variscite Four's application in the Adult Use Application Program. Variscite Four meets all eligibility requirements for "extra priority" in the Adult Use Application Program except that its majority owner was convicted of a cannabis offense under California law rather than New York law and he lived in a community disproportionately impacted by cannabis prohibition in California rather than New York.

5. Variscite Five is majority owned (51%) by an individual who was convicted of a cannabis offense in California under California law. He was not convicted of a cannabis offense in New York or under New York law. He lived in an area the City of Los Angeles designated as a disproportionately impacted area for cannabis enforcement for more than seven years. He resides in Los Angeles County and has a household income less than 80% of the median household income of Los Angeles County. I submitted paperwork confirming all of this as part of Variscite Five's application in the Adult Use Application Program. Variscite Five meets all eligibility requirements for "extra priority" in the Adult Use Application Program except that its majority owner was convicted of a cannabis offense under California law rather than New York law and he lived in a community disproportionately impacted by cannabis prohibition in California rather than New York.

6. Under Local Rule 7.1 (a), a moving party must file all motion papers with the Court and serve them upon opposing counsel who must file and serve its opposition papers not less than twenty-one (21) days after service of the motion.

7. The last day to submit materials for the Adult Use Application Program was December 18, 2023.

8. Defendants' previous application program for the Adult-Use Retail Dispensary ("CAURD") was held from August 25, 2022 through September 26, 2022 (the "CAURD Application Program").

9. Upon information and belief, Defendants are now in the process of reviewing adult use cannabis retail dispensary applications to issue licenses ("Licenses").

10. Defendants have stated that they will issue a limited number of Licenses . This is confirmed in the FAQ document attached to my Affirmation in support of the Application for Temporary Restraining Order.

11. As set forth in greater detail in the Complaint (attached hereto as Exhibit "A"), New York's Cannabis Law impermissibly favors New York residents over residents of other states in violation of the dormant Commerce Clause. As such, Plaintiffs will not be granted a License by Defendants.

12. That Defendants' unconstitutional Adult Use Application Program subjects Plaintiffs to (i) violations of their constitutional rights and (ii) irreparable harm.

13. For these reasons, Plaintiffs respectfully request that the Court find that good and sufficient cause exists why the standard notice of motion procedure cannot be used.

14. Accordingly, Plaintiffs respectfully request that this Court accept Plaintiffs' accompanying Order to Show Cause.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 21st day of December, 2023 at Los Angeles County, California.

A handwritten signature in black ink, appearing to read "Jeff Jensen". The signature is written in a cursive, flowing style.

Jeffrey Jensen